JD–25–08
Greensburg, IN

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

GREENSBURG MANUFACTURING, LLC,

and Case 25–CA–30467

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW.

Rebekah Ramirez, Esq. (Region 25, NLRB)
of Indianapolis, Indiana, for the General Counsel

John P. Hasman, Esq. (The Lowenbaum Partnership, L.L.C.)
of St. Louis Missouri, for the Respondent

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of Indianapolis, Indiana, for the Charging Party

DECISION

DAVID I. GOLDMAN, Administrative Law Judge. This case involves the alleged failure of an employer to engage in effects bargaining over the closure of its facility. As discussed herein, I conclude that the employer violated the Act as alleged.

STATEMENT OF THE CASE

Based on an unfair labor practice charge filed September 13, 2007, by the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW (Union or International Union), the General Counsel of the National Labor Relations Board (Board) issued a complaint on December 28, 2007, alleging violations of Section 8(a) (1) and (5) of the National Labor Relations Act (Act) by Greensburg Manufacturing, LLC (Greensburg or Employer). Greensburg filed a timely answer to the complaint denying all violations of the Act. This dispute was tried in Greensburg, Indiana, on March 13, 2008. Counsel for the General Counsel, the Union, and the Respondent, filed briefs in support of their positions on April 17, 2008. On the entire record, including my observation of the demeanor of the witnesses and other indicia of credibility, I make the following findings of fact, conclusions of law, and recommendations.

JURISDICTION

The complaint alleges, the Respondent admits, and I find that at all material times it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The complaint alleges, the Respondent admits, and I find that the Union at all material times has been a labor organization within the meaning of Section 2(5) of the Act.

FINDINGS OF FACT

Until its closure in March 2007,[1] the Respondent provided stamping for the automotive industry from its facility located in Greensburg, Indiana. The facility, which had operated at the site for many years, was acquired by the Respondent in 2005 and that summer it entered into a collective-bargaining agreement with the Union, which had long represented the facility's employees. A subsequent collective-bargaining agreement was reached between the parties in August 2006. At that time there were approximately 55 bargaining unit employees working at the facility.

Indications of financial difficulty surfaced in late 2006 and early 2007. On March 12 or 13, the Respondent provided the local union at the plant with notice of its intent to close the plant and cease operations. The notice came in a letter written by Greensburg's chief financial officer Gary Anderson advising that a decision had been made to close the plant on March 30, and asking the Union to contact him by March 16, "[i]f you would like to meet to discuss the effects of the Company's decision to close the plant and to cease operations on the members of the bargaining unit that your Union represents."[2]

Sergio Gonzalez was the international union representative responsible for servicing the Greensburg facility. On March 13, he heard about the plant closing letter from acting local union president Brian Ruble. Gonzalez went to the plant and while there approached Norma Bierlein, the manager who oversaw day-to-day human resources, payroll, and benefits for the facility.[3] Bierlein said that she would try to reach Gary Anderson but indicated that she had not seen him that day. Bierlein called Anderson (in front of Gonzalez) and left a message with Anderson.[4]

Gonzalez waited around the plant for an hour or two but did not see Anderson during this time. While there, Gonzalez asked Bierlein to fax a copy of the plant closing letter to the Union's regional office, which she did. The next day, March 14, Gonzalez faxed a letter to Gary Anderson at the Greensburg facility stating:

> "In response to your letter dated March 13, 2007, I would request to meet as soon as possible to negotiate the closeout agreement and severance package for employees of Local 1168."

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[1] All dates are in 2007, unless otherwise indicated.

[2] Although this letter was dated March 12, it is not clear whether the letter was received by the local union on March 12 or March 13.

[3] The parties stipulated that Bierlein was a supervisor as defined by Sec. 2(11) of the Act.

[4] Gonzalez' testimony about this call, and several others to Anderson placed by Bierlein at Gonzalez' prompting, was undisputed. Bierlein was not called to testify. Anderson was at the hearing, and testified, but did not dispute receiving calls from Bierlein asking him to call Gonzalez. As discussed, infra, I credit Gonzalez' testimony, including the statements of Bierlein to him that she was calling and leaving messages for Anderson to contact Gonzalez. Contrary to the Respondent's claims, the statements Gonzalez attributed to Bierlein, a manager and supervisor, are not hearsay. See Federal Rule of Evidence 801(d)(2).

Gonzalez' letter concluded by offering dates to meet and asking Anderson for a prompt response.[5]

In addition to sending this letter, Gonzalez went to the facility again on March 14 to look for Anderson. Again he asked Bierlein if she could find Anderson. Bierlein said that she would try to reach him. Gonzalez stayed at the facility about two hours on this day, talking to employees, trying to account for which equipment had already been removed from the facility, and waiting for Anderson. He did not see Anderson.

Also on March 14, the Employer distributed a memo to hourly employees reiterating the decision announced the previous day. The memo, sent from Gary Anderson and Dan Fetsch, in addition to reiterating the plant closure decision, provided employees with payroll and COBRA benefits information, and also declared that "[w]e will also compensate you for all accrued but unused vacation time." The memo closed by thanking employees for their "hard work and dedication during the past twenty-one months and the overall effort to transform the plant from a subsidiary to an independent business." The memo indicated that questions or comments should be addressed to Norma Bierlein or Donna Vanderbur. Employee and local union official Gladys Ailes also testified that the promise to pay vacation pay was made directly to her and others by Bierlein (who is Ailes' sister) and by Vanderbur, but that it was never paid.

On March 21, Gonzalez sent a letter by fax and certified mail to Anderson and Fetsch at the Greensburg facility. The letter referenced the Union's prior (unanswered) correspondence regarding the plant closing and "advised that the legal matters regarding the plant closing must be followed." This letter contained a list of requests including proposals for severance pay, pension, payment of accrued vacation within a week, additional employee insurance, retiree insurance, preferential hiring should the facility reopen, access to company books and records, and information about the reason for the plant closure. The Union received no response to this letter.[6]

Gonzalez again visited the plant on March 22. He talked once more to Bierlein and asked her specifically if there was another way to reach Anderson so that there could be "discussion about the fate of the employees and the fate of the workforce in the plant." Bierlein said there was not. Bierlein told Gonzalez that she was upset about the way employees were being treated and confided to Gonzalez that there was adequate money in the company's account to pay employees their vacation pay. She also said that she had been instructed by Anderson to disburse checks of $10,000 each to Anderson and Fetsch.[7] The following week, Gonzalez, along with Ruble, returned to the plant and found it abandoned except for an

[5]Contrary to the Respondent's suggestions on brief, I find that the letter was sent and received on March 14. Gonzalez' credited testimony (see, infra), the fax-generated transmission slip, and the failure of the Respondent to call Bierlein to testify to dispute receipt of the letter (or to testify at all), support this finding.

[6]This March 21 letter was sent by certified mail and the Union received a certified mail receipt indicating that the letter was received and signed for by Bierlein on March 22. I find that it was received by the Respondent on March 22.

[7]Asked about his receipt of such a payment, Anderson testified that "I don't recall it" but added that "If I did, it was probably a debt reduction. I don't know. We put a lot of money in the Company, but I don't recall a specific check for $10,000."

employee from the business across the street—rumored to have bought the building—who was scraping the Greensburg Manufacturing lettering off the door.

During the days and weeks after the plant closing announcement, Gonzalez also called Anderson at a phone number, probably a cell phone that he had used successfully in the past to reach Anderson. He called Anderson approximately 4 times during the period after the plant closing and left several messages on the phone's voice mail. The voice mail recording on the phone indicated that it was Gary Anderson's phone. Gonzalez did not receive any response from Anderson.

Anderson testified that, while he did not maintain an office at the Greensburg plant, he stopped by the plant two to three times a week in March 2007. If plant managers needed to reach him they would call him on his cell phone or email him. Anderson also had an "in box" to receive mail and information at the plant. He agreed that it was typical that if a fax came in for him at the plant it would be scanned and emailed to him.

Gonzalez never reached Anderson. Neither Anderson, nor anyone else from Greensburg responded to the Union's letters. Neither Anderson nor anyone else from the Respondent responded to the Union's phone calls made directly to Anderson, or to the messages left with Bierlein.[8]

[8]I note that I credit Gonzalez' testimony generally, and specifically his claims that he mailed the two letters to the Respondent regarding the plant closing and that he repeatedly phoned Anderson in an effort to set up bargaining meetings in the wake of the plant closure announcement. Anderson testified that "I don't really recall any" calls from Gonzalez in the month of March, although he was expecting reaction to the plant closing letters. Anderson was careful to state that he did not recall, rather than more assuredly denying receiving any phone calls, and, based on his demeanor, I believe this was purposeful. It enabled him to avoid denying events he knows may well have occurred but as to which he had no specific recollection (or did not want to admit to). As noted, Anderson did not deny in any fashion that Bierlein was trying to reach him at Gonzalez' request. Anderson also "d[id]not recall" seeing the letters sent to the facility by Gonzalez, although it would be highly unusual for a company, especially a small one where the chain of accountability is very clear, not to alert the CFO of responses to his own letters, particularly on a timely and important subject such as this. In any event, apart from whether Anderson "recalled" seeing the Union's letters, more generally, and more importantly, I do not believe for a second that Anderson—through letters, calls from Bierlein, and calls from Gonzalez—was unaware that the Union was trying to respond to Anderson's invitation to bargain. In fairness, Anderson never makes such a claim in his testimony. His denials and assertions of lack of recall were much narrower and the essential issues presented by Gonzalez' testimony are undisputed. As to Gonzalez, generally I believe that he was an honest witness who attempted to testify accurately. I base this on the fact that his testimony was plausible, almost entirely unrebutted, and on his demeanor. He was not a polished or practiced witness, but that does not cause me to accept the Respondent's contentions that he was not telling the truth and should be discredited. I reject such claims. Counsel for the Respondent was able to demonstrate, by Gonzalez' inconsistent testimony with regard to some collateral matters in Gonzalez' affidavit, that Gonzalez could get confused on recollection of some details. But what I judge to be his honest errors in his affidavit about Norma Bierlein's last name, or the date and attendees at a meeting well prior to the plant closing announcement, do not lead me to doubt the essential truth of his testimony.

Discussion

It is an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees." 29 U.S.C. § 158(a) (5). An employer's duty to bargain with its union encompasses the obligation to bargain over "wages, hours, and other terms and conditions of employment." 29 U.S.C. §158(d).

The Supreme Court has made clear that this includes the duty to bargain over the effects of a facility's closure even if the decision to close does not require bargaining. *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681–682 & fn. 15 (1981). Thus, it is settled Board precedent that an employer's refusal to engage in effects bargaining over its decision to close part or all of its business violates Section 8(a) (5) of the Act. See, e.g., *Champion International Corp.*, 330 NLRB 672 (2003); *Williamette Tug & Barge Co.*, 300 NLRB 282 (1990); *Metropolitan Teletronics*, 279 NLRB 957 (1986), enfd. mem. 819 F.2d 1130 (2d Cir. 1987).[9]

Bargaining over the effects of such a decision "must be conducted in a meaningful manner and at a meaningful time." *First National Maintenance*, supra at 682. Where an employer notifies a union after-the-fact of a change in a mandatory subject of bargaining, thereby presenting the union with a fait accompli, there is an unlawful failure to bargain without regard to whether the union requests bargaining. However, it is also well settled that after an employer notifies a union of a proposed future change in a mandatory subject of bargaining, the union must act with due diligence to request bargaining. *Vandalia Air Freight, Inc.*, 297 NLRB 1012 (1990).

In this case the analysis is quite straightforward. No later than March 13, the Employer informed the Union, through letters from CFO Anderson faxed to the local union and to the International Union that it intended to cease operations on March 30. The effects of such a closing on the bargaining unit employees is, indisputably, a mandatory subject of bargaining. Indeed, in his letters Anderson invited the Union to contact him "to discuss the effects of the Company's decision to close the plant and to cease operations on the members of the bargaining unit that your Union represents." However, it proved impossible for the Union to take the Respondent up on the offer to bargain.

As I have found, the very next day, March 14, Union Representative Gonzalez faxed a letter to Anderson "[i]n response to your letter dated March 13, 2007" and requested to meet as soon as possible to negotiate a "closeout agreement and severance package for the employees of Local 1168." When this letter, his phone calls to Anderson and Gonzalez' prompting of Norma Bierlein to have Anderson call did not prompt a response, Gonzalez wrote again by letter dated March 21. In this letter, addressed to Anderson and Fetsch, Gonzalez referenced having already written the March 14 letter in response to the notification of the upcoming plant closing and, having received no response, made several demands of the Employer including the sharing of information, the payment of various benefits, the establishment of new benefits, and preferential hiring in the event of a reopening.

Anderson had offered, on behalf of the Respondent, to be the person whom the Union contacted for effects bargaining. But after notifying the Union of the impending closure,

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[9]Moreover, such conduct is derivatively a violation of Sec. 8(a)(1) of the Act, "the rationale therefor being that an employer's refusal to bargain with the representative of his employees necessarily discourages and otherwise impedes the employees in their effort to bargain through their representative." *Tennessee Coach Co.*, 115 NLRB 677, 679 (1956).

Anderson became impossible to reach and did not return calls made to him by and on behalf of the Union. The Respondent's statutory obligation was greater than that, particularly in the context of time sensitive effects bargaining which, to be meaningful, needs to occur before the scheduled plant closing.

In *J.H. Rutter-Rex Mfg.*, 86 NLRB 470, 506 (1949) the Board stated that the obligation to bargain

> encompasses the affirmative duty to make expeditious and prompt arrangements, within reason, for meeting and conferring. Agreement is stifled at its source if opportunity is not accorded for discussion or so delayed as to invite or prolong unrest or suspicion. It is not unreasonable to expect of a party to collective bargaining that he display a degree of diligence and promptness in arranging for collective-bargaining sessions when they are requested, and in the elimination of obstacles thereto, comparable to that which he would display in his other business affairs of importance.

See also *Calex Corp.*, 322 NLRB 977 (1997) ("considerations of personal convenience, including geographic or professional conflicts to not take precedence over the statutory demand that the bargaining process take place with expedition and regularity"), enfd. 144 F.3d 904 (6th Cir. 1998).

Here, the Respondent's unavailability for bargaining after the announcement of the intent to close the plant was total, amounting to a "refusal to negotiate in fact" (*NLRB v. Katz*, 369 U.S. 736, 743 (1962)), a per se violation of the Act, without regard to the Respondent's motives. As the Supreme Court explained in *Katz*, 369 U.S. at 742-743:

> The duty "to bargain collectively" enjoined by § 8 (a) (5) is defined by § 8 (d) as the duty to "meet . . . and confer in good faith with respect to wages, hours, and other terms and conditions of employment." Clearly, the duty thus defined may be violated without a general failure of subjective good faith; for there is no occasion to consider the issue of good faith if a party has refused even to negotiate *in fact*—"to meet . . . and confer"—about any of the mandatory subjects.

(Court's emphasis and asterisks.)

Under these circumstances, there are simply no credible defenses to the allegations of the complaint, and the Respondent does not advance any. I have rejected, supra, the Respondent's contention that Gonzalez' testimony should not be relied upon. The Respondent also asserts on brief (R. Br. at 10–11) that the Union's March 14 letter, requesting to meet to negotiate a "closeout agreement and severance package for the employees of Local 1168," could be read as a request to bargain for local union staff, not for the Respondent's employees who were members of the local. In the context in which the letter was sent—in express response and reference to a plant closing announcement and invitation to bargain over the effects on unit employees issued by the Employer the day before—the contention is unusually meritless. No witness for the Respondent claimed, and no reasonable agent of the Respondent could claim, that they were misled. Alternatively, the Respondent claims (R. Br. at 11) that the letter was discriminatory, because it requested bargaining on behalf of employee members of Local 1168, and not for all bargaining unit employees, but there is no evidence of discriminatory intent, no evidence that anyone in the unit was a not a member of the local, and in any event, the request constitutes a conventional and fully comprehensible way of referring to

the bargaining unit. If there was concern on this score, the Respondent could have inquired. The fact is, these are make-weight arguments. The Respondent ignored the demand to bargain, as it ignored Gonzalez' follow-up attempts to contact the Respondent, and ignored the March 21 letter "Re Plant Closing" that referenced the unanswered March 14 letter. The Respondent's obligation was to respond positively to the request to engage in bargaining over the effects of the shutdown, not to ignore it, and not to invent post-hoc excuses for avoiding its obligation. The Respondent failed and refused to engage in effects bargaining, in violation of Section 8(a)(1) and (5) of the Act, as alleged.

CONCLUSIONS OF LAW

1. The Respondent Greensburg Manufacturing, LLC is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance associates of the employer at its Greensburg, Indiana establishment, including shipping, receiving department Associates, set-up persons, and the janitor; but excluding all office clerical Associates, professional Associates, technical Associates, guards, foreman, and all other supervisors as defined in the Act.

4. Since on or about August 1, 2006 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the bargaining unit described above, and has been recognized as such by the Respondent.

5. On or about March 13, 2007, the Respondent informed the Union that it intended to close its Greensburg, Indiana facility on March 30, 2007.

6. By the end of March 2007, the Respondent closed the Greensburg, Indiana facility in conformity with its announcement of intent to do so.

7. Since on or about March 14, 2007, the Respondent has violated Section 8(a)(1) and (5) of the Act by failing and refusing to bargain collectively about the effects on bargaining unit employees of the closure of and cessation of operations at its Greensburg, Indiana facility.

8. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

The Board's standard remedy in effects bargaining cases is the remedy set forth in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968) as clarified in *Melody Toyota*, 325 NLRB 846 (1998). This remedy requires that the employer bargain over the effects of its decision, and

provide unit employees with limited backpay, from 5 days after the date of the Board's decision, until the occurrence of one of four specified conditions. Bargaining must take place unless and until either: (1) the parties reach agreement, (2) the parties reach a bona fide bargaining impasse, (3) the union fails to request bargaining within 5 days of the Board's decision or to commence negotiations within 5 days of the employer's notice of its desire to bargain, or (4) the union ceases to bargain in good faith. *Transmarine*, supra, as clarified in *Melody Toyota*, supra.

While standard, a *Transmarine* remedy is not automatic in every effects bargaining case. "Rather, in fashioning a remedy for an effects bargaining violation the Board may consider any particular or unusual circumstances of the case." *AG Communication Systems Corp.,* 350 NLRB No. 15, slip op. at 6 (2007). In this case, the Charging Party contends that the circumstances warrant an order that the minimum backpay component of the *Transmarine* remedy should be supplemented by an order to pay vacation pay the Union says was owed to employees as of the closure and which, indeed, the employer promised it would pay. Under these circumstances, the Union contends that payment of vacation pay would have been front and center on the agenda had the Employer lawfully engaged in effects bargaining and, therefore, the policies underlying *Transmarine* militate for the inclusion of vacation pay in the remedy.

I do not accept the Charging Party's invitation to include an order to pay vacation pay as part of the *Transmarine* remedy. It is true that the Board has opened the door to this type of argument with its holding in *AG Communication Systems Corp.*, supra. In that case, an employer's failure to bargain over the effects of its closure of part of its business was found *not* to warrant a *Transmarine* bargaining and limited backpay remedy because, in the Board majority's view, the employees "suffered no detriment from the Respondent's failure to engage in effects bargaining" (supra, slip op. at 6) as they had been integrated into extant business operations with full credit for their past employment, continuation of equivalent pay and benefits, and representation by a new union in a larger bargaining unit. Under these circumstances, the Board majority determined that although the failure to bargain was a violation of the Act, "there appears to be little or nothing over which to bargain" (Id.) and as a "practical consideration" pointed out that had effects bargaining occurred the employees may have received less than they received as part of the new merged bargaining unit. (Id.)

The Board's willingness in *AG Communication Systems* to assess the likely substantive results of bargaining, had it occurred, and rely on that assessment to measure (and discount) the need for a bargaining remedy, obviously invites the argument made here. Thus, in this case, an assessment of the likely substantive results of bargaining, had bargaining occurred, leads to the conclusion of the likelihood that vacation pay, already promised by Bierlein, Fetsch, and Anderson, would be paid to employees, and therefore should be part of the remedy imposed by the Board. But, "the Board is not the arbiter of the substantive terms of bargaining proposals" (*AG Communication Systems*, supra, slip op. at 6) and the amount of the *Transmarine* backpay remedy is not tied to an amount the Board believes the employees would have received through bargaining. It is true that one goal of the *Transmarine* remedy is to make employees whole, and in that sense the payments are a proxy for benefits the employees would have likely achieved in bargaining. But in ordering the backpay the Board is simply presuming some loss to employees from the employer's failure to bargain and not speculatively attempting to determine the correct amount of the loss.

But making employees whole is the least important rationale for the bargaining and limited backpay remedy. "Secondly, and more importantly, the *Transmarine* and other similar 8(a)(5) remedies are designed to restore at least some economic inducement for an employer to bargain as the law requires." *O.L. Willis, Inc.*, 278 NLRB 203, 205 (1986). This effort to restore

the union's bargaining strength so that meaningful effects bargaining can be undertaken to remedy the unlawful failure to undertake such bargaining is unrelated to any assessment of what the union and employer might accomplish at the bargaining table. Instead, consistent with the Act's unwillingness to prescribe the outcome of bargaining, the remedy of requiring meaningful bargaining *is* the meaningful remedy for the refusal to engage in effects bargaining. Neither a charging party nor a respondent ought to be able to rely on the Board to compel results based on their ability to convince the Board of the likely outcome of bargaining, had it been lawfully undertaken in the first place.

Accordingly, I will recommend the traditional *Transmarine* remedy for the violation of the duty to engage in effects bargaining.[10]

The Respondent shall be ordered to cease and desist from its unfair labor practices and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the Respondent's decision to close its facility, the Respondent shall be ordered to bargain with the Union, on request, about the effects of that decision. Because of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, it is necessary to accompany the bargaining order with a limited backpay requirement designed to make whole the employees for losses suffered as a result of the Respondent's failure to bargain with the Union about the effects of its closure of the facility and to recreate in some practicable manner a situation in which the parties' bargaining positions are not entirely devoid of economic consequences for the Respondent. In order to accomplish this, the Respondent shall be ordered to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, supra, as clarified by *Melody Toyota*, supra.

Thus, the Respondent shall pay its laid-off employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and recommended Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closure; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining

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[10]The Charging Party cites *Cyclone Fence, Inc.*, 330 NLRB 1354 (2000), *Exhibit Dynamics, Inc.*, 343 NLRB No. 33 (2004), and *Laimbeer Packaging Co., LLC*, 339 NLRB 177 (2003), for the proposition that "the Board often grants relief in addition to the backpay provided under *Transmarine*." (C.P. Br. at 13). However, in each of those cases, changes in, or the failure to continue, wages, vacation, or other benefits owing to employees under a collective-bargaining agreement was a violation alleged in the complaint and found by the Board. Here, the complaint contains no such allegation, nor was there an effort by the General Counsel to prove the issue at trial. The Charging Party is free to seek a different remedy than the General Counsel for the violations found. *Kaumagraph Corp.*, 313 NLRB 624, 625 (1994). However, "[i]t is well established that the General Counsel serves as the master of the complaint and controls the theory of the case." *Fineberg Packing Co., Inc.*, 349 NLRB No. 29, slip op. at 3 (2007). "A charging party may not expand the scope of the complaint without the consent of the General Counsel." *Planned Building Services*, 330 NLRB 791, 793 fn. 13 (2000). Here, essentially, the Charging Party seeks a remedy for a violation that was not litigated by the General Counsel.

within 5 business days after receipt of this Decision and recommended Order, or to commence negotiations within 5 days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which they were laid off to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings that the laid-off employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[11]

The Respondent shall sign, and then duplicate and mail, at its own expense, a copy of an informational notice, as described in the attached Appendix, to the last known address of each current and former bargaining unit employee employed by the Respondent at any time since March 14, 2007.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Greensburg Manufacturing, LLC, Greensburg, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Failing or refusing to bargain collectively and in good faith with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, concerning the effects resulting from the closure of its Greensburg, Indiana, facility on or about March 30, 2007, on its employees in the following appropriate unit:

> All production and maintenance associates of the employer at its Greensburg, Indiana establishment, including shipping,

[11]Much of the General Counsel's brief is devoted to an extensive argument in support of the view that the Board should adopt remedies providing for the compounding of interest on backpay awards. In recent months the Board has repeatedly considered this proposition and declared that "we are not prepared at this time to deviate from our current practice of assessing simple interest." *Mays Electric Co., Inc.*, 352 NLRB No. 49, slip op. at 3 fn. 7 (2008); *National Fabco Manufacturing, Inc.*, 352 NLRB No. 37, slip op. at 3 fn. 4 (2008); *Mega Force Productions Corp.*, 352 NLRB No. 27, slip op. at 2 fn. 2 (2008). Given these pronouncements, I am not inclined to depart from the Board's traditional interest formula at this juncture.

[12]If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

receiving department Associates, set-up persons, and the janitor; but excluding all office clerical Associates, professional Associates, technical Associates, guards, foreman, and all other supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) On request, bargain in good faith with the Union concerning the effects on employees which it represents resulting from the closing of its Greensburg, Indiana facility on or about March 30, 2007.

(b) Pay the unit employees their normal wages for the period set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region mail copies, at the Respondent's expense, of the attached notice marked "Appendix"[13] to the last known address of each employee employed in the unit represented by the Union as of or after March 14, 2007; and similarly mail a copy of the notice to the Union at its business address. Copies of the notice, on forms provided by the Regional Director for Region 25, shall be mailed after being signed by the Respondent's authorized representative.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., April 30, 2008

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David I. Goldman
Administrative Law Judge

[13]If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail or refuse to bargain collectively and in good faith with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, concerning the effects resulting from the closure of our Greensburg, Indiana, facility on or about March 30, 2007, on our employees in the following appropriate unit:

All production and maintenance associates of the employer at its Greensburg, Indiana establishment, including shipping, receiving department Associates, set-up persons, and the janitor; but excluding all office clerical Associates, professional Associates, technical Associates, guards, foreman, and all other supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Federal law.

WE WILL, on request, bargain with the Union concerning the effects on our employees in the above unit resulting from the closure of our Greensburg, Indiana, facility.

WE WILL pay the unit employees their normal wages for the period set forth in the Decision and Order of the National Labor Relations Board, with interest.

Greensburg Manufacturing, LLC
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

575 North Pennsylvania Street, Federal Building, Room 238
Indianapolis, Indiana 46204-1577
Hours: 8:30 a.m. to 5 p.m.
317-226-7382.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 317-226-7413.